IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 69 of 2005
With
CIVIL APPLICATION No. 3655 of 2005
In
SECOND APPEAL No. 69 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it iks to be circulated to the civil judge ?

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GUJARAT HOUSING BOARD & 1 - Appellant(s)
Versus
DILIPKUMAR NAGARDAS THRO' P.O.A. - Defendant(s)

Appearance :
MR SB PANDIT for Appellant Nos. 1 and 2.
MS KRUTI M. SHAH Respondent No.1.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/09/2006

ORAL JUDGMENT

1. Mr.S.B. Pandit, learned counsel for the appellants and Ms.Kruti M. Shah, learned counsel for the respondent are heard.

2. Though the Civil Application No.3655 of 2005, an application for grant of stay, is listed for consideration, but with the consent of the parties, the appeal is finally heard.

3. Short facts leading to filing of the civil suit are that the appellants - Gujarat Housing Board floated a scheme in favour of economically weaker section of the society, certain amounts were to be deposited with the Gujarat Housing Board and some other requirements were also to be complied with on or before 29/9/1981. Flat No.1382 was earmarked in favour of the plaintiff and the plaintiff

was required to submit the order of allotment, affidavit of income making him eligible for allotment of the flat, deposit of a sum of Rs.3000.00 with the Bank where the Board had its own account, and was to make payment of the first installment immediately on confirmation of the allotment and make payment of the further installments in accordance with the scheme. The letter of allotment dtd.16/9/1981 directed that the conditions above referred were to be complied with latest by 29/9/1981. According to the defendants, the plaintiff could not comply with the terms latest by 29/9/1991, but came to the office of the Gujarat Housing Board on 16/10/1981 with the affidavit, letter of allotment, deposit and other requirements submitting inter-alia that the allotment be confirmed in his favour. It is to be noted that by that date, the Flat no.1382 was not allotted in favour of anybody. The submission made by the plaintiff was rejected and the flat was allotted in favour of third party on 21/10/1981.

4. The plaintiff being aggrieved by the conduct of the Gujarat Housing Board and feeling aggrieved by non-confirmation of the allotment and non-grant of the Flat, filed Civil Suit No.10 of 1983 before the learned trial court

submitting inter-alia that a decree in sum of Rs.5900.00 be granted in his favour in view of the fact that the Flat No.1382 has already been allotted in favour of some third party.

5. The defendants appeared before the trial court and contended that in view of the mandatory requirements which were to be complied with latest by 29/9/1981, the plaintiff having not complied with the said requirements, had lost his right and the defendants were entitled to make the allotment of the Flat in favour of third party. It was also submitted that no concluded contract came in existence and as the plaintiff was not ready and willing to perform the basic conditions relating to allotment, he had no rights. They prayed for dismissal of the suit.

6. The learned trial court, it appears from the arguments of the parties, was of the view that the parties instead of being daggers drawn should come to some settlement. The officer of the Gujarat Housing Board made a statement before the learned trial court that they could allot Flat No.1251 in favour of the plaintiff on two conditions, firstly, that the suit is withdrawn and

secondly, prevalent market price on the date of the fresh allotment is paid by the plaintiff. According to Mr.Pandit, learned counsel for the appellants, the difference between the original price and the price of the flat was Rs.3000.00 or so, on the date of fresh offer. According to Mr.Pandit, the plaintiff was agreeable to allotment of Flat No.1251, but insisted upon the payment of original price which was offered by Gujarat Housing Board. As the settlement failed, the trial continued.

7. The trial court after recording evidence of the parties and hearing them, decreed the suit in favour of the plaintiff directing that Flat No.1251 be transferred and sold in favour of the plaintiff on the price as was prevalent on 16/9/1981.

8. The Gujarat Housing Board being aggrieved by the said judgement and decree, took up the said matter in appeal and as the appeal was dismissed, the present Second Appeal was filed.

9. This appeal came up for hearing before the learned Single Judge on 10/10/2005 and came to be admitted on the

following substantial question of law;

(i) Whether the courts below could have passed the decree for specific performance of contract in a suit for damages?

10. From the very frame of the question, it would clearly appear that the Court was persuaded to believe that the present was a suit for damages only and as such a decree for specific performance of contract could not be granted in favour of the plaintiffs.

11. On the very same day, by an order in Civil Application No.3655 OF 2005, the court granted ad-interim relief in terms of para 2(i) till return of the Rule i.e. 29/11/2005.

12. The matter came up for hearing on the application on 25/8/2006. Ms.Kruti Shah, learned counsel for the respondent submitted before the Court that at the time of admission, the Court was mislead by the learned counsel for the appellants by suppressing the material facts that an application for amendment was filed, the application for amendment was objected to by the

defendants, the amendment was granted and thereafter, an issue was cast that whether the plaintiff is entitled to specific performance of the agreement. Mr.S.B. Pandit, learned counsel for the appellants admitted the submission of such an application for amendment, but denied all other submissions as incorrect. The matter was thereafter adjourned for being listed on 5/9/2006.

13. Mr.Pandit, learned counsel for the appellants submits that on 25/8/2006, he did not object to the fact of grant of the application but his submission, in fact, was that the amendment was not in relation to Flat No.1251 and that in view of the amendment, a decree specifically for Flat No.1251 could not be granted.

14. I must note that the proceedings dtd.25/8/2006 were recorded in presence of Mr.S.B. Pandit and Ms.Kruti Shah. The presumption would be that the proceedings were correctly recorded and no objections were raised to the record of the proceedings. However, respecting the words of Mr.Pandit I accept his submission that he was not objecting to grant of the application for amendment but his submission was that the amendment did not put the

case of the plaintiff on better footing.

15. The question on which the appeal has been admitted, in the opinion of this Court pre-supposes that the suit was for damages simpliciter and in view of the said fact, a decree for specific performance of contract could not be granted. In view of the fact that a decree for specific performance was sought, the question would not survive, because the question on which the appeal has been admitted, is on the presumption that in a suit for damages simpliciter, a decree for specific performance could not be granted.

16. Mr.Pandit, learned counsel for the appellants submits that at the time of admission, he had submitted to the learned Judge that the present was a case where the plaintiff did not ask for a decree specifically in relation to Flat No.1251, therefore, a decree for Flat No.1251 could not be granted. According to him, he also made a submission that no valid contract came into existence and that the plaintiff did not apply in time, therefore also, the present was a case where the suit ought to have been dismissed. Ordinarily, a statement at bar would be

accepted, but in a case where statement at bar runs contrary to the recorded proceedings, then, the proceedings recorded by the court would stand on a higher pedestal. If any person or a lawyer appearing in the court is of the opinion that the proceedings were wrongly recorded or certain concession which were not made have been recorded in the name of the said counsel, then such party if present in the court and/or counsel who was present in the court are obliged to make an application along with the affidavit of the counsel who had argued the matter that such statements which form part of the proceedings of the Court are incorrect. After such affidavits are filed, the Court which had recorded the proceedings may observe that the proceedings were not correctly recorded or may say that the affidavits filed by the party / counsel are incorrect. Then that would be the end of the matter. No court would be entitled to make an inquiry in relation to correctness of the proceedings recorded by the Court, no person would be entitled to say before the appellate court that the proceedings were wrongly recorded and no person would be entitled to say that his submissions were not recorded in correct form. The Supreme Court time and

again has held that sanctity is attached to the proceedings recorded by the Court and no challenge can be made to the correctness of such proceedings if the correctness is not challenged before the very same court by the counsel who had appeared in the matter. In a given case, if the counsel is not ready and willing to pledge his oath, then the appellate court or any other court would not accept the submission that what he meant to convey was not properly considered and what is recorded is incorrect.

17. Assuming I hold that there was no misrepresentation on the part of Mr.Pandit in pursuing / persuading the Court to admit the appeal on the question already framed, then too, the appellants can not wriggle out of the settled legal position. There had been no attempt on the part of the learned counsel for the appellants to file some affidavits before the learned Judge who admitted the appeal that the question framed by the Court did not arise and the questions raised and posed before the Court were something different. If for almost about 11 months, the position remains like as it was on 10/10/2005, then it would be too much to hold that the learned judge

recorded wrong proceedings, framed wrong question.

18. The question framed by the learned Single Judge at the time of admission of the appeal would not arise for consideration. On the date of the decree the suit was not a suit for damages simpliciter but was already converted into a suit for specific performance of the contract.

19. So far as the question relating to a valid contract between the parties and non-compliance thereof in time are concerned, from the proceedings dtd.10/10/2005, it does not appear that the said questions were raised. If that was so, the said questions do not arise for consideration.

20. It would be obligatory on my part to observe that after the amendment was incorporated, the learned trial court had cast an additional issue relating to specific performance. Issue Nos.3 and 4 so also issue Nos.2-A as are available on the record would clearly show that the trial court was alive to the dispute between the parties and the parties were also alive as to what was the case of each party. After giving my due and anxious

consideration, I am unable to hold that the learned courts below were unjustified in granting the decree for specific performance of contract in the present suit. I must further hold that the present is not a suit for damages simpliciter, but is a suit for specific performance of the contract.

21. The appeal deserves to and is accordingly dismissed with costs through out to be paid by the defendants to the plaintiff. Counsel Fee Rs.2500.00 (Rupees Two Thousand Five Hundred only) for this Court.

22. Let a decree be framed accordingly.

23. In view of the dismissal of the appeal, Civil Application No.3655 of 2006 is also rejected. Ad-interim relief granted earlier stands vacated.

(R.S.GARG,J.)

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